

Alaska Department of Revenue
Tax Division

On February 24, 2004, the Lieutenant Governor filed Department of Revenue regulations 15 AAC 20.530 and 15 AAC 20.900(c) relating to the Gas Exploration and Development Tax Credit under AS 43.20.043. The regulations have an effective date of March 25, 2004 and will be published in Register 169, April 2004. The official marked-up version of the regulations incorporating edits recommended by the Regulations Section of the Department of Law is available by request from the Tax Division by calling 907-269-6620. For informational purposes, a clean version of the regulations incorporating those changes is set out below.

15 AAC 20 is amended by adding a new section to read:

15 AAC 20.530. Gas exploration and development tax credit. (a) For purposes of AS 43.20.043(a), an operator or working interest owner is directly engaging in the exploration for and development of gas if the primary purpose of the activity is to explore for and develop gas and not oil. An operator may claim a credit as a taxpayer only to the extent that the operating agreement directly attributes the qualified capital investments and services to the working interest of the operator.

(b) A taxpayer shall make an irrevocable election to claim the credit under AS 43.20.043 on a timely filed tax return, including filing extensions, for the tax year in which the reservoir first produces gas for sale and delivery. A taxpayer that fails to make a timely election waives the amount of the credit that would have been allowable on the original and all amended tax returns for that tax year. A taxpayer that elects to claim a credit under AS 43.20.043, upon request by the department, shall provide to the department the information necessary to prepare the report required by sec. 4, ch. 61, SLA 2003.

(c) In order to qualify for a credit, the qualified capital investment must be made exclusively for one or more specific gas reservoirs. Indirect or overhead costs, including financing costs, do not qualify for the credit.

(d) Upon making an election as provided in (b) of this section, and subject to the limitations and carryover provisions in AS 43.20.043(c), the taxpayer shall apply the credit against tax liability in the tax year in which the reservoir first produces gas for sale and delivery. The expenditures for assets disposed of, removed from the state, or transferred from the state through the date of first production do not qualify for the credit. Assets disposed of, removed from the state, or transferred from the state after the date of first production do not reduce the available credit. A taxpayer that is entitled to a credit from more than one gas reservoir shall apply the credit from the gas reservoir that first produces gas for sale and delivery until the credit is exhausted, then from the next gas reservoir, until the credit from each successive gas reservoir is exhausted.

(e) For purposes of AS 43.20.043(e)(1), a taxpayer may convey, assign, or transfer the credit if the conveyance, assignment, or transfer is:

(1) in connection with the merger or acquisition of the entire worldwide unitary business of which the taxpayer was a part; and

(2) not the result of a partial liquidation.

(f) For purposes of sec. 3, ch. 61, SLA 2003, the taxpayer may not carry forward any unused portion of the credit to tax years beginning after December 31, 2017.

(g) For purposes of AS 43.20.043 and this section,

(1) “binding payment agreements” means binding contracts that

(A) are entered into after June 30, 2003;

(B) are entered into before the date the reservoir produces gas for sale and delivery; and

(C) provide for payment of an accrued expenditure after the date the reservoir produces gas for sale or delivery;

(2) “first use” means a use in any manner for a property’s designed and intended purpose;

(3) “gas for sale and delivery” means the portion of a commercial quantity of gas from the reservoir that is produced for sale and delivery into commerce; “gas for sale and delivery” does not include casinghead gas or gas produced for reinjection or field use on any lease or property;

(4) “operator” means a person holding

(A) a working interest in the lease property; and

(B) the right to explore for and produce gas from the lease or property;

(5) “taxpayer’s total liability” means the consolidated business’s net income tax liability to this state as finally determined by the department, before the alternative minimum tax imposed by AS 43.20.021(f) and other taxes imposed under AS 43.20.021(a). (Eff. __/__/__, Register __)

Authority: AS 43.05.080 AS 43.20.043 Secs. 3-4, ch. 61, SLA 2003

15 AAC 20.900(c) is amended to read:

(c) For purposes of AS 43.20.043, AS 43.20.072, and 15 AAC 20.410 –

15 AAC 20.530 [15 AAC 20.410 – 15 AAC 20.520],

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(Eff. 7/2/77, Register 62; am 3/6/98, Register 145; am __/__/____, Register ____)

Authority: AS 43.05.080 AS 42.20.043 AS 43.20.073

AS 43.19.010 AS 43.20.072